

Message Text

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FM USMISSION USBERLIN
TO AMEMBASSY BONN
INFO SECSTATE WASHDC 7402

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 1820

E.O. 11652: GDS
TAGS: PGOV, AKB, BQG
SUBJECT: TELTOW CANAL IN BERLIN: FRG-GDR NEGOTIATIONS:
SENAT ROLE

REFS: (A) BONN 13343; (B) BONN 13345 (RPT BONN 1285)

1. BERLIN LEGAL ADVISERS MET TO DISCUSS ISSUES RAISED REFTEL
A PARA 2. CONCLUSIONS WERE AS FOLLOWS:

2. A: HOW CAN WE INSURE THAT THE CANAL IS INCLUDED IN THE
TRANSIT TRAVEL AGREEMENT (TTA) REGIME?

A: LEGAL ADVISERS WERE ALL OF THE OPINION THAT WE CANNOT REPEAT
NOT INSURE THAT CANAL IS INCLUDED IN TTA REGIME. THEY WERE
ALSO OF THE OPINION THAT IT WAS UP TO THE GDR TO AGREE OR NOT
AGREE TO INCLUSION OF TELTOW CANAL (AS WELL AS THE PROPOSED
NORTHERN AUTOBAHN) IN THE TTA REGIME. IN ANALYZING THE
SITUATION, LEGAL ADVISERS CONSIDERED AS FOLLOWS: IF ONE HOLDS
THE VIEW THAT THE TTA APPLIES TO PRESENT AND ANY FUTURE TRANSIT
ROUTES, THERE IS NO REASON FOR THE FRG TO RAISE THE MATTER
AS A POINT OF NEGOTIATION WITH THE GDR, NOR FOR ALLIES
TO RAISE THE POINT TO THE SOVIETS IN MANNER SUGGESTED
BY THE FRG. IF, ON THE OTHER HAND, ONE DOES NOT HOLD THAT
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POINT OF VIEW, THEN NEITHER THE ALLIES NOR THE FRG HAVE
A LEGAL BASIS UPON WHICH TO ARGUE THAT THE TTA SHOULD
COVER THE TELTOW CANAL (OR THE NORTHERN AUTOBAHN).
THIS IS NOT TO SAY THAT ALLIES SHOULD OPPOSE FRG ASKING
THE GDR TO CONSIDER TELTOW CANAL (AND THE NORTHERN
AUTOBAHN) COVERED BY THE TTA. HOWEVER, IF THE GDR
WERE TO AGREE TO THIS PROPOSAL, ONE WOULD THEN HAVE THE

CURIOUS RESULT THAT THE ALLIES WOULD HAVE A RIGHT TO REVIEW GDR COMPLIANCE WITH THE TRANSIT REGIME FOR TELTOW CANAL (AND THE NORTHERN AUTOBAHN) AND COULD HOLD THE SOVIETS RESPONSIBLE FOR ANY GDR NON-COMPLIANCE. THIS WOULD INVOLVE A BACK DOOR ENTRY INTO COVERAGE BY THE QA OF 1971.

3. Q: WHAT TYPE OF MANDATE SHOULD BE GIVEN THE SENAT?

A: THE CURRENT MANDATE TO THE SENAT, ISSUED IN JULY, 1975 IN BK/L 75 (31), READS AS FOLLOWS:

BEGIN TEXT

SUBJECT TO THE PROVISIONS OF BK/L(73)46, THE SENAT IS HEREBY AUTHORIZED TO ENTER INTO DISCUSSIONS OF AN EXPLORATORY NATURE WITH THE COMPETENT GERMAN DEMOCRATIC REPUBLIC AUTHORITIES CONCERNING THE OPENING OF THE TELTOW CANAL. SUCH EXPLORATORY DISCUSSIONS SHALL BE EXCLUSIVELY CONFINED TO THE FOLLOWING TECHNICAL ASPECTS OF THE LOCAL PROBLEMS INVOLVED:

A. CONSTRUCTION AND MAINTENANCE

B. PROVISION OF FUNDS FOR THE WORK REFERRED TO IN PARAGRAPH (A) ABOVE
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C. OWNERSHIP AND USE OF THE MATERIALS USED IN THE REPAIR AND RECONSTRUCTION OF THE CANAL

D. SUPERVISION OF THE CONDITION OF THE WATER CHANNEL

E. EXCHANGE OR LEASING OF AREAS OF WATER.

END TEXT

WE UNDERSTAND THAT THE FRG WISHES THE SENAT TO BE AUTHORIZED TO "NEGOTIATE". THE SENAT'S MANDATE COULD BE EXPANDED BY AN AMENDMENT TO BK/L 75 (31) WHICH WOULD SUBSTITUTE THE WORD "NEGOTIATIONS" FOR "DISCUSSIONS OF AN EXPLORATORY NATURE" IN THE FIRST SENTENCE AND "EXPLORATORY DISCUSSIONS" IN THE SECOND SENTENCE. HOWEVER, IT WAS UNCLEAR TO THE LEGAL ADVISERS WHETHER THIS AMENDMENT IN THE SENAT'S MANDATE WOULD MEET THE FRG'S REQUEST. SUBSTITUTING FOR THE PHRASE "EXPLORATORY DISCUSSIONS" THE WORD "NEGOTIATIONS" IS A CHANGE OF SUBSTANCE; HOWEVER, SINCE THE LEGAL ADVISERS DO NOT CONTEMPLATE AN ALTERATION OF THE ENUMERATED POINTS A-E,

THE CHANGE IN SUBSTANCE WOULD BE SLIGHT. THE ISSUE,
ON WHICH LEGAL ADVISERS WERE UNINFORMED, IS EXACTLY
HOW DOES THE FRG WISH THE SENAT'S NEW MANDATE TO READ.

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4. Q: IS THE FRG-GDR COVER FOR SENAT-GDR DISCUSSIONS
SUFFICIENT?

A: LEGAL ADVISERS WERE SURPRISED AND CONFUSED BY THIS
QUESTION. IT IS CLEAR THAT THE FRG AND GDR HAVE BEEN
DISCUSSING THE MATTERS WHICH WOULD BE REFERRED FOR
SENAT-GDR DISCUSSION. THERE SEEMS TO HAVE BEEN AS MUCH
"COVER" AS IS POSSIBLE. THE REMAINING ISSUE IN USBER'S
VIEW IS NOT WHETHER OR NOT THE COVER IS SUFFICIENT
(SINCE WE HAVE NO DOUBT ON THAT POINT) BUT WHETHER THE
MANDATE GIVEN TO THE SENAT INVOLVES NEGOTIATIONS ON
SUBJECT MATTERS, SUCH AS THE TRANSIT REGIME TO GOVERN
TELTOW CANAL, (AND THE NORTHERN AUTOBAHN) WHICH WOULD
DO DAMAGE TO OUR THESIS THAT THE SENAT MAY ENGAGE IN
TECHNICAL DISCUSSIONS WITH THE GDR, BUT NOT STATE-TO-STATE
NEGOTIATIONS.

5. BERLIN LEGAL ADVISERS CONSIDERED THEMSELVES AT A
DISADVANTAGE TO DEAL WITH THESE MATTERS BECAUSE A
NUMBER OF IMPORTANT ASPECTS OF THE PROBLEM, ESPECIALLY
THE PRECISE NATURE OF FRG DESIRES, WERE NOT KNOWN TO
THEM. INASMUCH AS THE BONN GROUP IS RECEIVING INFORMA-
TION ON THIS DIRECTLY FROM THE FRG (RATHER THAN BERLIN
MISSIONS RECEIVING IT DIRECTLY FROM FRG IN BERLIN)
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BERLIN LEGAL ADVISERS ARE OF THE OPINION THAT THE BONN GROUP IS BETTER SUITED TO UPURSUE THE CONSIDERATION OF THIS MATTER.

6. COMMENT: WE AGREE WITH EMBASSY THAT ACTION SHOULD NOW BE IN BERLIN EVEN THOUGH AS REPORTED ABOVE BERLIN MISSIONS, DUE TO LACK OF FIRST-HAND INFORMATION, ARE UNABLE TO TAKE THAT ACTION. MISSION SUGGESTS BEST WAY TO REMEDY THIS PROBLEM IS TO HAVE ALLIED BONN GROUP REPS REQUEST FRG TO HAVE FRG PLENIPOTENTIARY IN BERLIN (SPANGENBERG'S OFFICE) INFORM ALLIES IN BERLIN ON LATEST FRG THINKING AND SPECIFIC GOALS IN THESE AREAS SO THAT WE MAY CONSIDER MATTER FURTHER BASED ON SOLID INFORMATION.NELSON

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